

APPEAL NO. 021591  
FILED AUGUST 1, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 16, 2002. With respect to the single issue before her, the hearing officer determined that the appellant's (claimant) compensable injury of \_\_\_\_\_, does not extend to or include an injury to the cervical spine. The claimant appealed, arguing that his rights were violated because the hearing officer did not instruct the interpreter to interpret the portion of the claimant's testimony that he gave in English. Alternatively, the claimant argues that the hearing officer's extent-of-injury determination is against the great weight and preponderance of the evidence. The respondent (carrier) filed a response, arguing that the claimant did not preserve any error regarding the hearing officer's instruction to the interpreter. Alternatively, the carrier urges affirmance of the hearing officer's determination that the compensable injury does not extend to or include the cervical spine.

DECISION

Affirmed.

The claimant contends that the hearing officer erred in failing to protect his rights by instructing the interpreter not to interpret the portion of the claimant's testimony that was given in English. At the hearing, the claimant was instructed to answer in Spanish and that the interpreter would interpret his answers to English. However, the claimant provided some testimony in English. The interpreter asked the hearing officer if she wanted the claimant's testimony given in English to be interpreted also and the hearing officer answered no. The claimant's attorney did not object to the hearing officer's instruction in that regard. In order to preserve error, the claimant had to raise the interpretation issue and give the hearing officer an opportunity to correct any possible error. Because the claimant did not do so, any possible error was waived. Nevertheless, we note that our review of the record does not establish that the claimant was denied an opportunity to provide meaningful testimony based upon the hearing officer's instruction to the interpreter. To the contrary, the testimony that the claimant gave in English concerned his explanation of the mechanism of injury to his neck and that testimony was repeated in Spanish and was interpreted.

Turning to the merits, we cannot agree that the hearing officer erred in determining that the claimant's compensable injury of \_\_\_\_\_, does not extend to or include the cervical spine. That issue presented a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. As the fact finder, the hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts the evidence has established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-

Amarillo 1974, no writ). The hearing officer was acting within her province as the finder of fact in resolving the conflicts and inconsistencies in the evidence in favor of the carrier. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **NATIONWIDE AGRIBUSINESS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Michael B. McShane  
Appeals Judge